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10 UNITED STATES DISTRICT COURT
11 NORTHERN DISTRICT OF CALIFORNIA
12 SAN FRANCISCO DIVISION

13 UNITED STATES OF AMERICA,	)	CASE NO. 17-CR-114-JST
14 Plaintiff,)	
15 v.	)	UNITED STATES' SUPPLEMENTAL
16 SHIV D. KUMAR,	)	SENTENCING MEMORANDUM REGARDING
17 Defendant.	)	RESTITUTION, SUPERVISED RELEASE TERM,
	)	AND SURRENDER DATE
)	
	)	Judge: Hon. Jon S. Tigar
	)	Sentencing Date: November 17, 2017
	)	Time: 9:30 a.m.
	)	Location: Courtroom 2, 4 th Floor
	)	1301 Clay Street
	)	Oakland, California

20 The United States of America ("Government") respectfully submits this supplemental sentencing
21 memorandum regarding the restitution amount to be imposed against Mr. Kumar, the supervised release
22 term to be imposed, and the date of Mr. Kumar's surrender. Mr. Kumar has retained new counsel and
23 the parties were not able to reach a stipulation regarding restitution, the term supervised release, or the
24 date of surrender.

25 **Background**

26 On March 24, 2017, Kumar pleaded guilty to Count 1 of the Information charging him with
27 making and subscribing a false tax return in violation of 26 U.S.C. § 7206(1). (Dkt. Nos. 8 & 9.) On
28 October 6, 2017, the Court imposed the following sentence against Mr. Kumar: 18 months'

imprisonment, a 3-year term of supervised release, payment of a \$100 mandatory special assessment, and other special conditions. (Dkt. No. 19.) Before the Court reached the issue of restitution, the proceedings were halted because Mr. Kumar appeared to be experiencing a medical emergency. (*Id.*) Subsequently, the Court continued Mr. Kumar’s sentencing to November 17, 2017, 9:30 a.m., in Oakland, California, to resolve the issue of restitution. (*Id.*) The Court ordered Mr. Kumar to be personally present at the sentencing on November 17, 2017, and that the parties be prepared to discuss the amount of restitution owed to the Internal Revenue Service. (*Id.*)

The Government recently learned that Mr. Kumar has retained new counsel.

Discussion

1. Term of Supervised Release

Mr. Kumar pleaded guilty to one count of making and subscribing a false tax return in violation of 26 U.S.C. § 7206(1), which carries a maximum prison term of three years. *See* 26 U.S.C. § 7206(1).

A felony punishable by “less than five years but more than one year” is a Class E felony. 18 U.S.C. § 3559(a)(5). The maximum term of supervised release for a Class E felony is “not more than one year.” 18 U.S.C. § 3583(b)(3). Because Mr. Kumar pleaded guilty to a Class E felony, the Court should impose a one-year term of supervised release against Mr. Kumar.

2. Restitution

According to the plea agreement, the tax loss caused by Mr. Kumar for 2009 and 2010 was \$1,584,055, and the restitution amount he owed to the IRS was \$260,055 (after accounting for Mr. Kumar’s tax payments for 2009 and 2010). The table below provides a breakdown of the figures in the plea agreement.

Year	Amount	Payments	Restitution
2009	\$763,576.80	\$684,653	\$78,923.80
2010	\$820,478.22	\$639,347	\$181,131.22
Total	\$1,584,055.02	\$1,324,000	\$260,055.02

Shortly before the original sentencing hearing in July 2017, Mr. Kumar’s attorney informed the Government that Mr. Kumar objected to the computations in the plea agreement. The Government went

through a second analysis of the tax loss caused by Mr. Kumar and accounted for the issues he raised. As demonstrated in the Government's supplemental sentencing memorandum, the tax loss was approximately \$36,000 lower than the amount identified in the plea agreement. (See Dkt. No. 17.) The Government recomputed Mr. Kumar's tax loss for 2008 through 2010 and determined Mr. Kumar's tax loss was \$1,547,945 for 2008, 2009, and 2010. Mr. Kumar agreed to that tax loss. The table below breaks down the loss by year.

Year	Recomputed Tax Loss Based On Original Returns
2008	\$174,556.69
2009	\$719,517.22
2010	\$653,871.08
Total	\$1,547,945

After filing the original U.S. Corporation Income Tax Returns, Forms 1120, for A-Paratransit, Inc., Mr. Kumar fully paid A-Paratransit, Inc.'s 2008 tax liability. Re-computing the restitution using the recomputed tax loss figures, the restitution amount Mr. Kumar owes to the IRS is \$49,388.30. The table below provides a breakdown of how the Government arrived at this figure.

Year	Amount	Payments	Restitution
2009	\$719,517.22	\$684,653	\$34,864.22
2010	\$653,871.08	\$639,347	\$14,524.08
Total	\$1,373,388	\$1,324,000	\$49,388.30

Accordingly, the Court should impose a total restitution amount of \$49,388.30.

3. Surrender Date

Finally, the Government recommends that the Court order Mr. Kumar to surrender to the Bureau of Prisons on or before January 5, 2018, at 2 p.m.

Dated: November 10, 2017.

BRIAN J. STRETCH
United States Attorney

/s/ Jose A. Olivera
JOSE A. OLIVERA
Assistant United States Attorney